

Remarks

Claims 7 to 16 are in this application.

Primary Examiner Hannaher is cordially thanked for the several telephone discussions with the undersigned regarding the use of modifiers in the claims of this Amendment on May 29 and 30, 2007. During these discussions, the undersigned requested clarification of the Notice of Non-Compliant Amendment of May 25, 2007. Pursuant to this, the undersigned was advised that since claims 7, 8 and 16 were not directed to the elected invention, they required the modifier "withdrawn" and possibly that claim 16 required a modifier "new, withdrawn".

The undersigned disagreed that the "withdrawn" modifier was required and noted that MPEP 821 states that all claims that the examiner holds as not being directed to the elected subject matter are withdrawn from further consideration *by the examiner*.

Also, MPEP 821.02 is directed to a situation after election without traverse and provides a form paragraph (§ 8.06) for an examiner to use whereby the examiner withdraws claims as being drawn to a non-elected invention (or species).

In view of these provisions of the MPEP, the undersigned advocated that the claims as presented in the Amendment of February 23, 2007 did not include "withdrawn" claims and that the Amendment was compliant.

Primary Examiner Hannaher stated a position that MPEP 714 II C (A) requires that for any amendment filed in response to a restriction, any claims which are non-elected must have the status identifier (withdrawn).

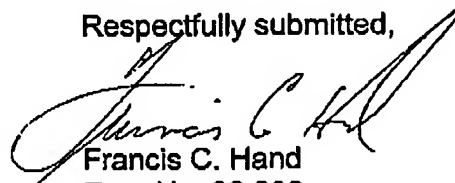
MPEP 714 II C (A) also states that any claims added by amendment must be identified as "new" and the text of the claim must not be underlined.

In the present Amendment, original claims 7 and 8 have been provided with the modifier (withdrawn). New claim 16 has been provided with the modifier (withdrawn-new) in view of the list of acceptable alternative status modifiers set forth in MPEP 714 II C (E). Further, claim 16 is to be entered of record in this application to obtain the benefits of 35USC 121 and for purposes of filing any future continuation or divisional application and to obviate any double patenting rejection in a future divisional application.

Since the election is not yet fixed as per MPEP 818.01, Applicant reserves the right to traverse the requirement for restriction pending receipt of a first Office Action on the merits of the elected claims. Applicant further understands that the propriety of the requirement for restriction will be reconsidered when all the claims directed to the elected invention are in condition for allowance pursuant to MPEP 821.04(Rejoinder).

Applicant further requests that future Notices of Non-Compliant Amendments be amplified to specify the claims for which modifiers are considered to be improper so as to avoid a need to request clarification.

Respectfully submitted,



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